

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RECO MITCHNER,

Petitioner,

Civil Case Number: 04-10208

Criminal Case Number: 02-20058

v.

Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

**ORDER DENYING MOTION FOR LEAVE TO FILE LATE OBJECTIONS,
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND
DENYING MOTION TO VACATE SENTENCE UNDER 28 U.S.C. § 2255**

Petitioner Reco Mitchner, after having been convicted and sentenced for possession of cocaine base with intent to distribute it, filed a motion to vacate his sentence on August 13, 2004. The motion was referred to Magistrate Judge Charles E. Binder for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Binder filed a report on May 16, 2005 recommending that the motion be denied. In the report, the magistrate judge duly noted the requirement that the petitioner file objections within ten days. No objections were filed, and due to an administrative irregularity, the report and recommendation was not then accepted by this Court.

On December 22, 2005, petitioner Mitchner filed a motion for leave to file objections to the report and recommendation out of time. He alleges that, despite the clear pronouncement in the report, he was led to believe that objections were not necessary. This advice, he claims, was given to him by a fellow inmate.

The Court finds that the reasons advanced by the petitioner for his late filing are insufficient to excuse him from compliance with the statutory deadline. Moreover, the Court has reviewed the

petitioner's proposed objections and finds them to be without merit. Although the petitioner raised five grounds for relief in his initial motion, his objections focus on those grounds relating to the failure of his counsel to file a direct appeal and a stipulation that the defendant would waive his right to appeal the denial of a motion to suppress. The magistrate judge thoroughly discussed those issues in his report, and the Court finds that the magistrate judge's findings and conclusions are reasonable and well supported by the record. Moreover, even absent a stipulation to refrain from appealing the denial of the suppression motion, an unconditional guilty plea would have barred such an appeal. In addition, the plea agreement contained an appeal waiver that would have covered the issue relating to the previously-denied motion to suppress.

The petitioner has not shown good cause for filing late objections, nor has he demonstrated that he would be prejudiced by the failure to file those objections.

Accordingly, it is **ORDERED** that the petitioner's motion to file objections to the report and recommendation out of time [dkt #48] is **DENIED**.

It is further **ORDERED** that the magistrate judge's report and recommendation is **ADOPTED**.

It is further **ORDERED** that the motion to vacate sentence pursuant to 28 U.S.C. § 2255 [dkt # 36] is **DENIED**.

Dated: January 23, 2006

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 23, 2006.

s/Tracy A. Jacobs
TRACY A. JACOBS